IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1013 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

VIJENDRAKUMAR BALVIRSING

Appearance:

MR SAMIR DAVE, APP for Petitioner

MR NL RAMNANI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/12/2000

ORAL JUDGEMENT

#. The matter is placed on the note filed by Mr.N.L.Ramnani, learned counsel for the respondent and prayer has been made therein for early hearing of the matter. The court has asked the learned counsel for the

respondent if he is ready in the matter, same can be taken up for hearing today itself. He has stated that he is ready in the matter and the matter may be taken up accordingly. The matter has been taken up for final hearing. Heard the learned counsel for the parties.

#. It is not in dispute that this vehicle involved, i.e. Muddamal in the criminal case registered for commission of offence u/s.394, 397, 342 of Indian Penal Code and Section 25(1)(A)(BA) of the Arms Act was used in commission of serious crime, i.e. robbery. This robbery was committed in the Gandhidham Cooperative Bank Ltd. The Muddamal recovered is TATA SUMO jeep, one iron carbonate tank and gas cutter, one revolver, cartridge. Not only this, in the said TATA SUMO jeep two sirens were fixed and flash red light was also there on the vehicle. This vehicle is registered at Delhi. The respondent, claiming himself to be the registered owner of the vehicle on the basis of the duplicate registration book of the same, applied to the learned trial court for release of the vehicle in his favour which application came to be rejected by the learned Judicial Magistrate, First Class, Gandhidham, Kutchh, under the order dated 10.9.99. He preferred revision application against the said order which came to be allowed by the Addl. Sessions Judge, Kutchh at Gandhidham under the order dated 30.10.99.

#. This special criminal application has been filed by the State and this court has been pleased to stay the order of the learned Addl. Sessions Court which is in force till date. In view of the way, manner and the purpose for which this vehicle has been used coupled with the fact that red light has been put thereon with obvious purpose to dodge and cheat the police and public at large, it is not a fit case where the learned Addl. Sessions Judge should have interfered with the order passed by the learned trial Court. Merely on the ground that the trial of the case may take some time and some of the accused may be absconding and keeping of the vehicle at the police station or in the court premises will damage the same is hardly of any substance which justifies release of the vehicle in this case. It may be true that the respondent No.2 may not be accused in the case but it is also not relevant consideration in all the cases on the basis of which the order has to be passed invariably in favour of the registered owner of the vehicle which is used in commission of serious offence of bank robbery with full preparation. The learned counsel for the respondent cited three decisions, the details of which are as under:

(i) Ashok Kumar v. State of Bihar & ors. - JT 2000(8) SC 84

(ii) Thara v. The Inspector of Police, Vengal - 1988 CRI.L.J. 1881

(iii) Rajendra Prasad v. State of Bihar and anr. - JT 2000(5) SC 502

In two cases of the Hon'ble Supreme Court, it is true that the vehicle was released on the ground that keeping the vehicle standing in the compound of the police station is likely to be lost as exposed to heat and cold. Each case has to be decided on its own facts. In those cases, on the basis of the facts thereof, the Hon'ble Supreme Court would have considered it to be a fit case to release the vehicle. The learned counsel for the respondent has failed to cite any decision of the Hon'ble Supreme Court or of any other High Court in a case where vehicle has been used for commission of robbery of the bank and which is found carrying one iron carbonate tank, gas cutter, one revolver and cartridge, same is released. Above that in this case the vehicle was found decorated with two sirens and flash red light. This has been done with the object and purpose to deceit people, police as well as the bank officers and employees. In such a serious case, the articles found in the vehicle and offence for commission of which it is used does not justify release of the vehicle and nor it is in the larger interest of public to release the vehicle only on the ground that trial may take some time or keeping of the vehicle at the police station may result in deteriorating it's condition. The case of Madras High Court on which reliance has been placed is also of little help to the respondent. Each case has to be decided on its own facts and if we go by the facts of this case in hand, it is not in the interest of public at large to release the vehicle in favour of the alleged ostensible owner thereof. At this stage it is difficult to believe that the vehicle was carrying red light and two sirens without the knowledge of the respondent herein.

#. The learned counsel for the respondent urged that the respondent is a poor farmer. Next it is submitted that the respondent had purchased this vehicle for his business, i.e. to earn money by giving this vehicle on hire. These contentions makes it difficult for the court to accept that the respondent is a poor farmer. The respondent is doing the Taxi business. Whether this vehicle is a Taxi car or not is not disclosed at this

stage. Section 397 of Cr.P.C. though confers revisional powers upon the Sessions Court but not in every case these powers are to be exercised.

#. In the facts of this case, the learned Judicial Magistrate has not committed any illegality or error of jurisdiction in passing the impugned order which justifies the interference of the revisional court therein. Only in the case where grave injustice is to result by non interference by the revisional court, the court may be justified to entertain and allow the revision application. In the facts of this case, release of the vehicle in favour of the alleged ostensible owner thereof, the respondent herein, is not in larger public interest. This vehicle is not only involved in such a serious offence but therein, the accused were carrying all the objectionable things as stated above and in addition to it, a flash red light and two sirens. We are hearing everyday about bank robberies and in case this vehicle is released there may not be any guarantee that it may not be used again for offence of similar nature. Giving of the bond will not be a substitute for taking care of that such a vehicle should be permitted to be released. In the facts of this case, in case the order of the revisional court is allowed to stand, it will certainly result in causing serious prejudice to the State as this TATA SUMO jeep, one iron carbonate tank and gas cutter, one recover, cartridge are used for commission of a serious offence of bank robbery with full preparation and two sirens were also fixed and flash red light were also there on the vehicle to deceive the policewalas and public and the possibility of use of this vehicle again in the facts of this case in similar offence cannot be ruled out.

#. In the result, this special criminal application succeeds and the same is allowed and the order of the Addl. Sessions Judge, Kutchh at Gandhidham dated 30.10.99 in Criminal Revision Application No.54 of 1999 is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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(sunil)